

# The Imaginary Constitution of Constitutions

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**Abstract:** The modern constitution is predominantly understood as a way of instituting and limiting power, and is expected to contribute to (societal) stability, certainty, and order. Constitutions are hence of clear sociological interest, but until recently they have received little sociological attention. I argue that this is unfortunate, as a sociological approach has much to offer in terms of a complex and historically sensitive understanding of constitutions and constitutionalism. Constitutional sociology has particular relevance in contemporary times, in which the meaning of constitutions and constitutionalism is uncertain, and subject to contestation, and possible transformation. The constitutional sociology developed here is phenomenologically inspired and stresses the importance of understandings of the modern constitution as ‘embedded’ in constitutional imaginaries. Rather than as a visible and rationally designed construct, constitutional sociology understands constitutionalism as ultimately a ‘field of knowledge’. The suggestion is that this field of knowledge or ‘modern constitutional horizon’ is characterized by a tension between two ultimate markers, in terms of what Castoriadis has identified as the social imaginary significations of mastery and autonomy. Mastery and autonomy form prominent constitutional orientations, historically taking the form of solidified, instituted meanings, identified here as the modernist and the democratic imaginaries. In the last section, the two instituted constitutional imaginaries will be ‘unpacked’ in specific components (state sovereignty, absoluteness, fabrication, endurance, and distrust regarding the modernist imaginary; indeterminacy, creativity, dynamism, self-government and popular sovereignty regarding the democratic one). In conclusion, I suggest that constitutional sociology might significantly help elucidating the potential losses and heteronomous tendencies that may result from the contemporary uncertainty and possible metamorphosis that affects the modern constitution.

**Keywords:** Constitutional Imaginaries — Constitutional Sociology — Modern Constitutionalism — Order — Self-Government — Social Imaginary Significations

*Introduction*

Democracy as a political regime and modern constitutionalism as a means of instituting political power are widely understood as intrinsically related, even if also as in clear tension (Brunkhorst 2009; Loughlin and Walker 2007). One widespread way of dealing with this tension is by understanding the relation between democracy and constitutionalism as the latter providing the prerequisites for the functioning and stability of the former (c.f. Dworkin 1995). On this—widely adopted—reading, constitutionalism guards essential elements of democracy, such as the rule of law, the guarantee of fundamental rights, and the division of powers, without which democracy would risk collapsing into the tyranny of the majority, or worse, illiberalism or authoritarianism.<sup>2</sup> As I will argue in this article, such a view provides a restricted view of constitutionalism (c.f. Brunkhorst 2014), and is ultimately strongly related to one meta-dimension of modern, constitutionalism, that is, the idea of rational mastery, a view that can be related to the ideas of order, certainty, and stability. The imagining of constitutional democracy tends to be reduced to the instituted imaginary of cohesive and orderly design, as a way of ‘fixing’ or instituting reality, while foregoing a deep ambiguity that characterizes modern constitutionalism.

The predominant view of constitutions—understood as vehicles of political and social order—clearly relates to one of the key preoccupations of sociology and sociological theory, that of societal order, cohesion, functionalization, and integration. It is in some ways surprising that in the contemporary debates on constitutionalism, and its relation to democracy, sociological theory has not so far been at the forefront. The article argues that this is unfortunate, as a social-theoretical and sociological approach has much to offer to the analysis of the relation between democracy and constitutionalism, and can build on important social-theoretical traditions that reflect on the foundations and constitution of societies (e.g., the works of Arendt, Castoriadis, Lefort, and recently Brunkhorst and Scheppele).<sup>3</sup>

The argument here is that a sociological approach is highly necessary for a number of reasons, but for one in particular. A sociological approach to constitutionalism highlights and develops dimensions of constitutionalism that allow for a more complex understanding of constitutionalism, which is not reducible to the predominant interpretation mentioned above, related to the imaginaries of formal-rationality and order. A sociological approach points to the need to go beyond a mere formal-rational and functional understanding of constitutions, that is, the idea of constitutional orders of law as grounded in the language of Enlightenment reason, and as a means of ‘neutralizing’ or limiting power, and of the taming of society. A sociological approach—grounded in particular in Castoriadis’ notion of imaginary significations and Lefort’s account of the symbolic institution of democracy—draws attention to how

the formal-rational dimension of constitutions is an essential but ultimately partial dimension of constitutional orders, as the latter are not reducible to a formal, universalistic rationality, but rather display important substantive dimensions, related to collective self-representation, and ideas of self-rule and emancipation. What is of great significance here is the recognition that modern constitutionalism is grounded in a deep ambiguity that is characteristic of modernity, and which involves mastery/control as well as autonomy/emancipation (Wagner 1994, p. 22). The nature of the ambiguity underpinning constitutionalism needs to be teased out and reflected upon, as suggested by Paul W. Kahn, in an 'effort to describe the social imaginary of the political' (Kahn 2011, p. 26), or in other words, by describing how the political and the constitutional are in complex ways 'embedded' in a dual social imaginary signification that both limits our contemporary understandings of the political, while at the same time, allowing for creative re-interpretation. The approach taken here contrasts with some other approaches in constitutional sociology, which one-sidedly emphasize the formal-rationality and functionalism of constitutions (as briefly related to below). This sociology of constitutions underlines the role of the imaginary, the symbolic, and the interpretive, which includes, but is not exhausted by, the formal-political and -legal. It suggests the fundamental role of meaning-giving, interpretation, and creativity as historical and contextual capacities, in important ways specific to societies (c.f. Frankenberg 2006; Scheppele 2004, forthcoming).

The sociological view illustrated here attempts to pursue three objectives. First of all, it emphasizes the embeddedness of modern constitutions in a dual imaginary of rational mastery and autonomy. In this, it emphasizes the *tension* in the dual imaginary signification that deeply informs modernity at large (c.f. Arnason 1989; Wagner 1994), and equally the idea of modern constitutionalism, and finds further expression in tensions between the universal and the particular, the secular and the sacred, norm and identity, and the constituted and the constituent (c.f. Kahn 2011). Johann Arnason's depiction of Castoriadis' approach as an understanding of 'modernity as a field of tensions, structured around two dominant poles with their respective clusters of derivative principles and perspectives' (Arnason 1989, p. 323) is highly relevant here, and brings me to the second objective. Castoriadis' identification of the tension between mastery and autonomy is highly significant for a comprehensive account of modern constitutionalism,<sup>4</sup> but tends to remain too abstract and fails to specify the historically instituted imaginary dimensions to modern constitutional democracy.<sup>5</sup> Even if Castoriadis himself stressed the relation between social imaginary significations and instituted social imaginaries as one of 'crystallization' and 'solidification' (Castoriadis 2007, pp. 126-127), he did not systematically and historically explore the 'clusters of derivative principles and perspectives' to political modernity (Karagiannis and Wagner 2012). In the second part of the article, I will pursue a preliminary step to

identify and break down two instituted constitutional imaginaries that, I contend, have historically played a prominent role in the practice and experience of modern constitutionalism. A third objective, but less developed here (but see Blokker forthcoming), is to contribute to the debate on the contemporary transformation of modern constitutionalism, and in particular to shed light on (domestic as well as international) trends of the juridification of politics, and the reduction of constitutional regimes to largely functional, rational orders, while imaginaries of collective autonomy and democratic inclusion are marginalized or reasoned away (Holmes 2014; Thompson 2015).

The article is structured as follows. I will first briefly discuss the emerging field of the sociology of constitutions or constitutional sociology. Second, I will introduce a distinctive approach in constitutional sociology, a phenomenologically inspired one, emphasising Claude Lefort's and Kim Scheppele's work on the symbolic institution of constitutional democracy. Third, I will discuss the dual imaginary dimension to constitutions, and in the last section, I will suggest two distinctive imaginaries that inform modern constitutionalism, a modernist and a democratic one. I will sketch a first attempt to 'unpack' the two instituted constitutional imaginaries - the modernist and democratic imaginaries - in their specific components (state sovereignty, absoluteness, fabrication, endurance, and distrust regarding the modernist imaginary; indeterminacy, creativity, dynamism, self-government and popular sovereignty regarding the democratic one). In conclusion, I suggest that constitutional sociology may significantly help elucidating the potential losses and heteronomous tendencies that may result from the contemporary uncertainty and possible metamorphosis that affects the modern constitution.

### *I. A Sociology of Constitutions*

Modern constitutionalism is facing powerful tendencies of transformation and even potential demise (Dobner and Loughlin 2010; Amhlaigh, Michelon, and Walker 2013), not least having to do with the emergence of structures and institutions with constitutional relevance beyond national democracies, as is most clearly evident in the process of European integration, but also due to the process of 'social acceleration', which requires increasingly rapid and frequent intervention into established institutions, including the constitutional framework (Prandini 2013). A further phenomenon is that of 'counter-constitutionalism' in some countries, such as Hungary and Poland, in which key tenets of the liberal understanding of constitutionalism are questioned.

It is suggested here that the complex changes affecting constitutionalism call for a sociological approach. Such a need has recently been recognized and has emerged in the works of Teubner (2012), Skapska (2011), Thornhill (2011), Febbrajo and Corsi (2016), and Blokker and Thornhill (forthcoming). From a sociological view, the analysis of the phenomenon of constitutions cannot

be reduced to problems of design and institutional calibration. As Grazyna Skapska has put it, even if in a somewhat restricted manner, '[c]onstitutions are not mere arrangements for the division of powers; they are understood as "public symbols" and "birth certificates" of modern nations' (Skapska 2011, p. 5). Constitutions concern then, not mere legal-technical questions of the limitations of arbitrary power, but equally concern questions of self-identity and democratic self-understanding. Constitutions significantly contribute to the project of society as such, and point to dimensions of social integration and solidarity, collective identity, as well as the construction of public spheres and the possibilities of democratic engagement. In this, a constitutional sociology puts emphasis on the complex interrelationship between law, politics, and society. This further means that constitutional sociology studies historical and contextual elements that play a role in constitution-making and constitutional politics, the distinct political-cultural projects that inform constitution-making, and the functions that constitutions perform in society as well as the meanings that constitutions acquire.

Both the variety of constitutional realities and the intrinsic tensions of the project of modern constitutionalism are not ordinarily sufficiently recognized in either constitutional law or political science, which tend to stress one standard and one set of dimensions of constitutions, having to do with design, limitations, and stability. The argument here is that by means of a constitutional sociological approach it is possible to show that a predominant, universalistic view of constitutionalism is emphasizing a specific imaginary related to order, which informs modern understandings of constitutionalism, but by doing so it largely overlooks a concurrent imaginary that has equally played a highly significant role in political modernity, and which is concerned with creation.<sup>6</sup> In this, a constitutional sociology can help us to identify distinct imaginaries that are at the basis of modern constitutionalism, but also to shed light on competing views and understandings of constitutions in constitutional practice. This is not least an important exercise, as the idea of constitutionalism is changing rapidly in current times (c.f. Febbrajo and Corsi 2016).

The sociological dimensions of constitutions include dimensions of regulation and limitation of political power, but equally pertain to symbolic and axiological, as well as to democratic-participatory dimensions (Blokker 2013). Constitutions consist of structures that regulate politics and limit the execution of political power, but constitutions equally reflect collective identities, create distinctive constitutional identities (Rosenfeld 2009), and reflect specific sets of cultural values and symbols. Also, constitutions relate in different ways to (democratic) politics and provide a variety of ways of the expression of (constituent) power. But perhaps the most important sociological dimension is that of legitimacy. Sociological legitimacy can be understood as a 'matter of justifications of rule empirically available, one that the citizens, groups, and administrative staffs are likely to find valid, under the given historical

circumstances' (Arato 2011, p. 40). An emphasis on sociological legitimacy further indicates the always existing distance, and the dynamic relation, between institutions and society, and it helps to bring into the picture a plurality of constitutional subjects or 'interpreters' that engage with constitutions (Häberle 1975; see further below).

In sum, constitutional sociology understands constitutionalism in a comprehensive way as a 'field of knowledge' or 'web of ideas about the organization of political power' (Scheppelle forthcoming). The field of knowledge that is constitutionalism consists of a set of interpretations of what Castoriadis has identified as social imaginary significations, that is, constitutionalism as an idea and practice is deeply informed by a set of imaginaries related to political and legal modernity. Modern constitutionalism can be understood, in this regard, as a specific response to problématiques that characterize modernity, in particular those of political order and collective self-rule. Constitutional sociology as it is understood here is particularly interested in elucidating this relation between political modernity and constitutionalism, in terms of the way in which constitutionalism consists in instituted manifestations of prominent imaginaries.

## *II. A Phenomenologically Inspired Sociology of Constitutions*

A sociology of constitutions needs to develop an analytical language that not only reflects on how constitutions perform functional roles of distributing power in increasingly complex societies—constitutions as universal norms and constraints, external to social and political action, as it were—but that equally emphasizes how constitutional norms and values are internal to legal, political, and social action. The latter means that constitutions are to be taken as collective constructs of meaning, that provide concepts, categories, and taken-for-granted assumptions that allow social actors both to engage with the world as well as to criticize the existing social and political institutions. In contrast, in contemporary debates on constitutionalism, political science tends to understand constitutions as if they are natural phenomena that can be analysed by studying external features and structures (Scheppelle forthcoming). In a well-known book by Elkins et al. (2009), for instance, the emphasis is on the endurance of constitutional structures, measured on the basis of case-study and statistical evidence, drawing on a 'data set [that] records a large set of characteristics of each and every constitution written since 1789' (Elkins et al. 2009, p. 9). Legal approaches, to the contrary, tend often to focus on the interpretation of constitutional norms by legal actors alone, following an internalistic legal rationality only open to legal interpreters, and without engaging with larger society (Scheppelle forthcoming).

In contrast, a sociological approach explores how constitutions are perceived as real by a range of legal, political, and, social actors, even if not

necessarily in the same manner. Indeed, we have to understand the ‘social constitution of the legal constitution’ (Scheppelle forthcoming; 2004). As Kim Lane Scheppelle aptly puts it in her call for a phenomenological sociology:

In general, constitutional studies have taken the view of a constitution as a text or as a set of visible and functioning institutions. [Phenomenological Sociology] focuses our attention on the way that people experience constitutional life. It also examines the way that constitutional knowledge comes to be developed, shared and passed on as the result of social interaction, through institutions, across history and as sedimented fact that becomes part of the taken-for-granted world. A [Phenomenological Sociology] perspective on constitutionalism focuses on the ways that constitutional ideas are generated and naturalized. It offers us a way to link the ideas of the law with the social action carried out within those ideas (Scheppelle forthcoming).

Constitutional *experience* consists of an on-going process of imagining and performing the constitutional—through fictions, metaphors, images, and conceptions—and in this depends on political imaginaries that shape and limit views of the possible, but that equally provide the basis for re-imagining the constitutional order (c.f. Ezrahi 2012). The dimension of *Verstehen*—of the experienced taken-for-grantedness (or not) of constitutions—relates to both instrumental and value-rational dimensions, in that both are ultimately (re-)constructed in social action through interpretative engagement. In this, in constitutional experience it is not so much about a choice between the rational and the irrational, or ‘between fictive or real political grounds’, as it is ‘one between alternative reality-producing fictions, between types of regulative political imaginaries’ (Ezrahi 2012, p. 4).

The taken-for-grantedness of constitutions reminds us of Charles Taylor’s understanding of social imaginaries as latent background knowledge, but it can equally, in a more critical way, be related to Lefort’s understanding of the political as both the explicit institutionalization of social space and as the covering up or concealment of the original division which is at the basis of any modern society (Lefort 1986, p. 197; Marchart 2007, p. 101; Lindahl 1998). Drawing on this view, modern constitutions can be seen as explicit institutional and symbolic means to institute power and society, while at the same time it should be acknowledged that constitutions are historical products and outcomes of specific interpretations of modernity. Historicity and partiality are however concealed, drawing on distinctive interpretations of the key imaginary significations of mastery and autonomy, denying the constitution’s imagined, historical and situated nature. Specific interpretative choices, instituted in existing arrangements, however re-appear when we carefully examine what Lefort refers to as ‘ideology’, or the ‘*discursive actualization* of the imaginary dimensions’ (Marchart 2007, p. 101; italics in the original): ‘the examination of ideology confronts us with the determination of a type of

society in which a specific regime of the imaginary can be identified' (Lefort 1986, p. 197).

An emphasis on the imaginary, ideology, and experience draws attention to how constitutional orders are always already embedded in a distinctive societal context. One set of tensions concerns the encounter between abstract, universalistic or cosmopolitan ideologies and internally produced, societal understandings of constitutions, as ideologies of the particular, and as intrinsic parts of social practice and meaning (this seems to me, of continuous relevance also in our age of 'world constitutionalism' see Ackerman 1997) (c.f. Somek 2014). The instituting of constitutional orders sees the development of a constitutional identity over time, a process which can be understood as the crystallization of a historically situated understanding and set of justifications for the constitution as a mode of constituting society. Such identities are always temporary in that they consist of elements that simultaneously provide for order, on the basis of a consensus on shared norms and principles, but they can equally become the basis of constitutional conflict, critique and calls for (radical) change. Thus, on the one hand, constitutional identities display an integrative force that provides a political community with self-understanding, but at the same time constitutionalism as a language of power and rights in need of justification provides tools for the contestation of that very same order (c.f. Lefort 1988; Rosenfeld 2009, p. 51; cf. Nash 2014, p. 353).

A sociological or phenomenological approach to constitutionalism (as recently suggested by Scheppele, forthcoming) is in this related to Lefort's insight that society can never be fully united around a representation of its unity, even if this is what modern constitutions set out to achieve. Constitutionalism, far from being an achieved instituted reality, is then part of a continuous quest for certainty, which can, however, never be fully obtained and includes major moments of crisis and the 'putting to the test' of foundational orders; a condition which seems to be particularly pregnant in contemporary times. It can be argued that the self-representation of society through its constitution is losing its hold in some cases.<sup>7</sup> This brings us back to Lefort's emphasis on the symbolic institution of democracy, that is, that the objective, instituted form of political life depends on the sense that actors make of it (Ingram 2006, p. 36). Constitutional 'ideologies' in Lefort's sense can be understood as attempts to make sense of instituted constitutional democracy.

Understood in this way, constitutional sociology can be related to constructivist or interpretivist engagements with constitutionalism (c.f. Shaw 1999, pp. 579-80; Wiener 2008, pp. 68-71). That is, sociological constitutionalism widely reflects an understanding that social knowledge and social reality are constructed through processes of meaning-giving by social actors themselves. On this model, actors enact meaning in social practice, but this meaning is to a significant extent grounded in inter- and trans-subjective systems of meaning-giving, which orient actors in their interpretation of reality.

In the case of constitutional law, this means that constitutional principles and norms are always subject to a process of interpretation by significant constitutional actors, and they are consequently open to contestation. Actors and structures are thus understood, in this approach, as mutually constitutive.

### *III. The Imaginary Dimensions of Constitutions*

The argument here is that the understandings and practice of modern constitutionalism are grounded in deeper social and political imaginaries, which provide the markers and limits of what is perceived as possible and impossible. As Suzi Adams has argued, '[s]ocial imaginary significations are to be understood as complexes or figurations of latent meaning that make "social reality" conceivable in the first place' (Adams 2012, p. 31). Castoriadis' view of modernity is central here in that he identified two central cultural orientations or social imaginary significations: rational mastery and autonomy (Arnason 1989; Castoriadis 1987; Wagner 1994). Whereas the former has been mostly related to the cultural project of economic modernity or capitalism, the latter is often seen as the key orientation of political modernity or democracy. Modern constitutions can, however, be shown to be grounded in both imaginaries of mastery and self-rule.

In terms of the imaginary constitution of constitutionalism—a prominent dimension of modern democracies but little discussed in terms of imaginaries<sup>8</sup>—constitutions and constitutionalism as a politico-cultural project refer to the dual imaginary signification in complex ways. The dual imaginary informs the way in which constitutions are constructed by constitutional interpreters, and specific interpretations, which prioritize different objectives and limitations, function as an 'implicit map of the constitutional space' (Perju 2010, p. 344). To the extent that constitutionalism is seen as a precondition for democratic regimes, it relates to the institutionalization of the imaginary signification of collective autonomy and the 'explicit self-constitution of society' (Arnason 1989, p. 330). In the Sieyèsian reading, the constitutional order is the institutionalized result of the exercise of constituent power, the latter being the expression of a radical pursuit of autonomy. But constitutionalism can be equally related to the imaginary signification of rational mastery, in its 'reduction of the world to an object of control' (Arnason 1989, p. 329).

The exploration of the dual imaginary dimension of constitutions reveals that the inherent tension between mastery and autonomy needs further reflection and cannot be theorized away, as in theories of the incomplete nature of modernity, in which the emergence of visible instances of this tension are understood as 'corrigible deviations' to an otherwise completable path of modernity (Habermas 1992; cf. Arnason 1989, p. 326).<sup>9</sup> In more explicit terms, the notion of a social imaginary in relation to constitutionalism emphasizes, first, the role of collectively instituted meaning and its inter-cultural variations

in grounding constitutionalism. In this, imaginaries impose a form on the world, while at the same time giving access to it (Arnason 1990, p. 28). Second, the imaginary constitution of constitutions draws attention to forms of social creativity and to constitutional interpretation as a potentially creative force. Third, the notion provides a corrective to a one-sided focus on ‘reason’ and emphasizes different constitutional rationalities (c.f. Blokker 2010a). The idea of social imaginary displays a certain tension with functionalist accounts, in that it argues that functions are ultimately grounded in the historical, symbolically constructed world views that are at the basis of the constitution of society (Arnason 2014; see also Scheppele forthcoming). On this view, constitutions are not entirely reducible to rational and/or functional orders. Rather, the imaginary significations that inform modern constitutional orders always contain an ‘interpretive surplus’, which is *inter alia* reflected in specific, local constitutional narratives that attempt to impose coherence onto society. More importantly, however, this surplus draws attention to the fact that constitutions cannot be reduced to institutions that respond to universalistically understood societal needs and structural demands. The self-constitution of society entails the invention, definition, and interpretation of its needs (c.f. Arnason 1990, p. 28-29). The notion of constitutional imaginary emphasizes therefore the role of meaning in modern constitutionalism, in addition to, but also in the very definition of, the functional determinations of constitutions.

The dualistic imperative is of great significance for a sociology of constitutions for two further reasons, both of which result from the inability of much of the legal and political-scientific study of constitutionalism to grasp the socio-political dimension of constitutions. One key dimension of constitutions is the dimension of conflict and difference: that is, the struggle over the meaning of constitutionalism within particular societies and increasingly also beyond societies, and the significant variations of constitutional trajectories that result from such conflicts. A second dimension is that of the changes in the comprehension of constitutionalism that occur in the current ‘constitutional age’ (Loughlin 2015, p. 2), which are exemplified by a great uncertainty over what constitutionalism means, and are equally reflected in a wide variety of theories of constitutionalism beyond the state. In the current period of constitutional flux, the contested nature of constitutions becomes evident in the interaction between constitutional actors. Equally, scholarly interpretative and imaginative capacities are put to the test in tracing as well as understanding ongoing processes of constitutional metamorphosis.

#### *IV. The Dual Constitutional Imaginary*

For a phenomenologically inspired constitutional sociology, then, it becomes crucial to explore the relation between constitutionalism—or perceptions of the role and significance of constitutions in society—and a distinctive

political and social imaginary horizon. Based on the reflections above, I suggest that two historically central imaginaries can be identified within the modern (Western) constitutional horizon. I will call these two imaginaries the *modernist constitutional imaginary* (which has largely prevailed, even if in different guises, since the end of the 18<sup>th</sup> century) and the *democratic constitutional imaginary* (c.f. Arnason 1990, p. 39). These two political imaginaries are understood here as historically predominant constellations of meaning that—in a variety of ways—have historically instituted the indeterminate imaginary significations of mastery and autonomy. What is essential is that the two political imaginaries invoke a different understanding of founding or constituting the modern polity, but at the same time are of equal significance for modern constitutionalism.

#### *4a. The modernist imaginary*

A first, historically predominant, modernist imaginary can be related to a view of constitutionalism as the Enlightenment ‘belief that political institutions obtain legitimacy if they enshrine constitutional laws translating abstract notions of justice and personal dignity into legal and normative constraints for the use of public and private power’ (Thornhill 2011, pp. 173-183). I suggest the modernist imaginary includes a number of core components, which directly inform the ontology of modern constitutionalism. The latter finds its theoretical and political expression particularly in liberal or legal constitutionalism (c.f. Dowdle and Wilkinson 2016). I suggest that these components include the ideas of sovereignty, absoluteness, fabrication, endurance, and distrust.

#### **Sovereignty**

In the modernist political imagination, sovereignty largely means the ‘highest power to command’ (as in Jean Bodin’s classical understanding, cf. Kalyvas 2005, p. 224; Přibáň 2015, p. 4), translated into the idea of the ‘supreme ordering power of a polity’ (Přibáň 2015, p. 6)

This view of sovereignty is in contrast to the one imagined in the democratic imaginary, sovereignty as ‘power to found, to posit, to constitute’, as we will see below (c.f. Kalyvas 2005, p. 225). Even if the revolutionary changes of the end of the 18<sup>th</sup> century involved a shift from absolutist power embodied in the King to popular sovereignty grounded in the ‘People’, in the modernist imaginary the emancipatory promises of the popular will are relegated to a view of sovereignty in which this emancipatory power is largely subject to usurpation by the structures of the modern state, in particular its judicial branch (c.f. Kahn 2006), grounded in themselves in images of rationality, certainty, and stability. In this, a crucial division between the ruler and the ruled is reproduced (c.f. Tully 2008, p. 202), and the (constitutional) law is

depoliticized in that it takes precedence over politics (Kahn 2011, p. 31). Sovereignty, in a way, disappears from view in the modernist imagination, even if it is conceived as being at the origins of the modernist edifice, creating the modern, constitutional-democratic state. The latter is grounded in an idea of an orderly constitutional system of laws:

[O]rder is the product of general norms expressed in and through law. These norms bind government actors and protect individuals from each other. Every individual can appeal to a judge to protect his or her legal rights. This model of legality, when linked to the democratic production of norms, is the source of legitimacy in the normal situation. The sovereign is displaced from view, lingering at best as a mere abstraction—popular sovereignty—but not capable of any concrete intervention (Kahn 2011, p. 32).

### **Absoluteness**

The idea of sovereignty, as a latent power, is related to a general orientation in the modernist imaginary to absoluteness, that is, a need to ground the constitutional order in an extra-societal (transcendental) force. This idea of the absoluteness of law is related to the classical conception of law as command, and reveals an imaginary grounded in extra-legal and extra-social principles as the basis of the order of law (as in natural law, the sovereign nation, or self-evident truths, cf. Wilkinson 2012). As argued by Michael Wilkinson, ‘[m]odern constitutionalism reflects the “Platonism of modern natural law”, the Constitution becomes the new God to worship or the new myth to behold, and the revolutionary treasure of political freedom is lost in the constitutionally frozen republic’ (2012, p. 48). This view informs an idea of constitutions as expressions of universal truths, whose origins ultimately lie outside the constitutions themselves, and which are necessary for the grounding of (democratic) polities (c.f. Hutchinson and Colon-Rios 2011, p. 6). In other words, the peaceful stability of the polity is ultimately only realizable by means of the grounding of a polity on the basis of universal, extra-societal principles, which themselves are not to be subject to change or interpretation through political action. The foundations of the polity become by an appeal to this absolute source of authority, which also creates a strong distinction between the law and politics. In the American Revolution, as observed by Hannah Arendt, this was achieved by means of the declaration of ‘truths to be self-evident’, truths of a divine origin on which no further political deliberation is necessary (Arendt 1990, p. 194; Wilkinson 2012, p. 48).

### **Fabrication**

But modern constitutions are at the same time seen as ‘man-made’ and modern constitutional democracy is an expression of the ‘emerging consciousness

that man can make his own *history*' (Wilkinson 2012, p. 50; emphasis added). The imaginary signification of rational mastery relates to the modern idea of man's ability to make his own laws and in particular the idea that constitutions are architectures of modern society and constitution-makers its architects (Wilkinson 2012, p. 51). The modern era of constitutionalism is one of societal mastery or engineering, as expressed in the idea of 'constitutional engineering'— 'constitutions are similar to machines or mechanisms that must work and that must have an output of sorts' (Sartori 1994, p. ix) — of an edifice that is designed to set the limits of possibilities for political action. The idea of engineering or fabrication (Arendt 1990) substitutes (constitution-) making for political action, putting the 'self-evident truths' prior to the plurality of opinions and worldviews of individuals in society. In this, the emphasis on making/engineering implies an anti-political turn in emphasizing the need for rationally designed institutions as a means to tame the uncertainty, passionate nature, and indeterminacy of politics.

This imaginary comes, for instance, to the fore in the way Publius in *The Federalist* 'turns away from civic virtue' and endeavours to 'establish political order on what man *is* (interested, passionate, ambitious, avaricious), rather than on what he *ought* to be (virtuous, patriotic, vigilant, public spirited)' (Frank 2009, pp. 71-72; emphasis in original). The 'enthusiastic imagination' of the revolutionary spirit was to be tempered or disciplined by a 'formative imagination', channelled through institutional design (Frank 2009, p. 77).

On this view, viability, coherence, and certainty are to be found in universal, rational principles and institutions, which are given (or can be discovered by reason). Once the right principles have been unearthed, the politics at the basis of the realization of human society is reduced to 'mere administrative execution' (Wilkinson 2012, p. 50). Thus, the foundations of society are to be institutionalized, but are not themselves part of political interaction. Fabrication is about the implementation of the 'right', rational plan of society, and once the right institutions have been established, there is no need for politics other than in the form of administration or technocratic management. As Wilkinson expresses this view, '[p]olitics then becomes about mastering the techniques of human affairs according to a predetermined plan, based on a constitutional blueprint for a utopia' (Wilkinson 2012, p. 53).

### Endurance

A fourth component in the modernist imaginary is that of endurance, or the idea that the quality of a societal arrangement is higher (by whatever measure) when it is displaying stability over time. In this, the 'implicit standard... is that of institutional order and political stability; the celebration of "endurance" places these formal virtues ahead of all others' (Hutchinson and Colon-Rios 2011, p. 6). In relation to constitutions as foundations of the polity, this means that

[c]onstitutions generate a set of inviolable principles and more specific provisions to which future law and government activity more generally must conform. This function... is vital to the functioning of democracy. Without commitment to higher law, the state operates for the short-term benefit of those in power or the current majority... By limiting the scope of government and recommitting politicians to respect certain limits, constitutions make government possible (Elkins et al. 2009, p. 38).

Indeed, as Tom Ginsburg argues elsewhere, 'it is safe to say that virtually every normative constitutional theory presumes that constitutions survive over a relatively extended period of time. Without endurance, constitutions cannot provide a stable basis for politics and cannot constitute a people out of diverse elements. The assumption of endurance is thus built into the very idea of a constitution' (Ginsburg 2011, p. 112). One reason for endurance can be found already in Aristotle, that is, enduring rules and institutions are necessary to stimulate habits of obedience amongst citizens. What is more, stable constitutions help to create stable political institutions, which in turn stimulate social and political stability and incremental, organic change, discouraging revolutionary upheaval (Ginsburg 2011, p. 113). Also Arendt noticed this modern preoccupation with permanence in *On Revolution*:

Nothing perhaps indicates more clearly that the revolutions brought to light the new, secular, and worldly yearnings of the modern age than this all-pervasive preoccupation with permanence, with a 'perpetual state' which, as the colonists never tired of repeating, should be secure for their 'posterity' (Arendt 1990, p. 229).

### **Distrust**

The emphasis on absolute principles, fabrication and endurance is related to a general distrust of the people or society at large, in other words, of 'ordinary citizens' capacity to participate fully, freely, frequently and actively in their own governance' (Hutchinson and Colon-Rios 2011, p. 7). It can be related to a general 'discomfort with democracy' in legal thinking (Bellamy 2007, pp. 1-2, citing Roberto Unger), which has a 'hard time reconciling itself to the idea that democratic politics might be the primary, rather than a subsidiary or ultimate, source of the law' as well as recognizing the 'creative moments' from which law originates (Unger 1996, p. 77). Equally, in political science and practice, a skeptical view of the political capacity of citizens is widespread, as attested by widely influential works of such classical authors as Robert Dahl and Joseph Schumpeter, who emphasized elite rule and a preferable political non-engagement of citizens, and whose views of democratic

politics still today are central to imagining representative democracy (c.f. Blokker 2010b; Kramer 2004).

The modernist imagination is perhaps best articulated, even if perhaps in too extreme terms, in James Madison's imagination of an anti-Republican viewpoint as '[t]he people are stupid, suspicious, licentious' and 'cannot safely trust themselves'. 'Wonderful as it may seem', 'the more you make government independent and hostile towards the people, the better security for their rights and interests' (James Madison, cited in Kramer 2004, p. 259). James Tully recalls in a similar manner the Kantian view that a 'modern constitution ... does not arise from the spontaneous interaction of the pre-civil people but requires some kind of master or legislator to impose law on the crooked timber of the people and to act without their consent and independent of law in exceptional circumstances until they are "civilised" by centuries of subjection to civil law' (Tully 2008, p. 203). What is most striking in this view is the strong distinction between the understanding of law as an orderly device, grounded in a higher rationality, best protected by judicial experts, whereas the views of the people are related to irrationality, unpredictability, and instability.

#### *4b Democratic imaginary*

The second, historically clearly subordinate or marginalized imaginary that nevertheless has played a prominent role in constitutional politics and constitutionalism in distinct periods and events, is the democratic imaginary. This imaginary finds (theoretical) reflection in the thinking of scholars such as Hannah Arendt, Sheldon Wolin, Cornelius Castoriadis, or, recently, Hauke Brunkhorst. It can equally be found in reflections more closely related to (constitutional) practice, such as those of Thomas Jefferson, as well as in forms of dissent, as in the anti-foundationalist observations of Vaclav Havel, or in the constitutional 'anti-politics', for instance, that has emerged in Iceland in recent years (see Bergsson and Blokker 2013; Urbinati 2014).

In theoretical terms, the democratic imaginary comes through most clearly in Castoriadis' understanding of autonomy:

In its genuine signification, democracy consists in this, that society does not halt before a conception, given once and for all, of what is just, equal, or free but rather institutes itself in such a way that the question of freedom, of justice, of equity, and of equality might be always posed anew within the framework of the "normal" functioning of society (Castoriadis 1997, p. 87).

A number of imaginary components become clear in this remark: a structural openness towards foundational questions, an attention for the novel and unexpected, an emphasis on renewal, and conscious self-rule ('institutes itself'). There is a clear affinity here with some of the key concerns of Hannah

Arendt (c.f. Straume 2012), in particular regarding Arendt's observations in *On Revolution* regarding the lost treasure of the American Revolution. Her be-moaning of the 'lost treasure' relates to the revolutionary spirit at the heart of the historical changes of the American Revolution, which disappeared almost completely in its wake, through the act of grounding the revolution.

To the extent that the greatest event in every revolution is the act of foundation, the spirit of revolution contains two elements which to us seem irreconcilable and even contradictory. The act of founding the new body politic, of devising the new act of government involves the grave concern with the stability and durability of the new structure; the experience on the other hand, which those who are engaged in this grave business are bound to have is the *exhilarating awareness of the human capacity of beginning*, the high spirits which have always attended the birth of something new (Arendt 1990: 223; emphasis added).

The loss of the revolutionary spirit is not least because of the predominance of what has above been described as a modern political imaginary of stability, permanence, and fabrication:

And while it is true that historical developments in the United States have hardly borne out this fear [of elective despotism], it is also true that this is almost exclusively due to the founders' *'political science'* in establishing a government in which the "divisions of powers have constituted through checks and balances their own control. What eventually saved the United States from the dangers which Jefferson feared was the *machinery of government*; but this machinery could not save the people from lethargy and inattention to public business, since the Constitution itself provided a public space only for the representatives of the people, *and not for the people themselves* (Arendt 1990, p. 238; emphasis added).

A democratic imaginary is in evident tension with the orderly, modernist imaginary. Some of the key components of the democratic imaginary include indeterminacy, creativity, dynamism, self-government and popular sovereignty.

### Indeterminacy

Indeterminacy refers to the perception that ultimately it is impossible to establish a final Truth about human society or, in other words, to close the quest for the common laws that should hold together society. Rather than perceiving modernity as an 'unfinished' but ultimately finishable project, modernity is understood as giving an impetus for a radical questioning of the Self, including the collective Self, without, however, ever providing a set of final institutional solutions for the realization of the 'good society'. What

is more, given the fact of the plurality of human society, as emphasized so strongly by Arendt, and hence a variety of views on the world, any structural closure of public debate on societal foundations runs the risk of suppressing plurality. In the terms of Castoriadis, ‘society is self-creation’ (Castoriadis 1991, p. 84). The social or human-made nature of the construction of society means that there is no ‘intrinsic criterion of and for the law’ and there cannot be any ‘effective guarantee that this criterion, however defined, will not be transgressed’. Indeed, ‘[t]here is no norm of norms which would not itself be a historical creation’ (Castoriadis 1991, p. 115).

In terms of modern constitutionalism, this means that a closure around the core principles of the constitutional order—by means of, for instance, the entrenchment of fundamental principles as in the German Constitution’s *Ewigkeitsklausel* (eternity clause)—is seen as highly problematic. Rather, constitutional rules and principles should be open to periodic re-consideration, as in Jefferson’s dictum that every generation should be able to re-open the debate on society’s constitutional foundations, estimating constitutional replacement to be necessary every 19 years, as the dead have no right to rule over the living (c.f. Ginsburg 2011, p. 113).<sup>10</sup>

[I]t may be proved that no society can make a perpetual constitution, or even a perpetual law. The earth belongs always to the living generation. They may manage it then, and what proceeds from it, as they please, during their usufruct. They are masters too of their own persons, and consequently may govern them as they please. But persons and property make the sum of the objects of government. The constitution and the laws of their predecessors extinguished them, in their natural course, with those whose will gave them being. This could preserve that being till it ceased to be itself, and no longer. Every constitution, then, and every law, naturally expires at the end of 19 years. If it be enforced longer, it is an act of force and not of right (Jefferson 2004 [1789]).

## Dynamics

The democratic imaginary involves then a distinctive understanding of temporality. Rather than emphasizing endurance, entrenchment, and foundationalism, constitutional fundamentals are understood as temporary landmarks in an ongoing collective ‘conversation’ about the political community. In this, democratic society is not understood as fully achieved in the modern revolutions, nor is it conceived in an evolutionary sense, that is, as progressing towards an evermore refined and differentiated, and ultimately known, set of institutions, but rather as always historically situated and always open to critique and renewal. Constitutions are about instituting a collective ‘conversation, conducted by all concerned, open to new entrants and new issues, seeking a workable formula that will be sustainable rather than assuredly

stable' (Hart 2003, pp. 2–3; cf. Chambers 1998). On this view, while the foundational nature of modern constitutionalism is not dissolved completely, the idea of a 'final act of closure' is replaced by one of flexibility and a 'permanently open process' (Hart 2003, p. 3). This derives from an unwillingness to tie down democracy to choices made by previous generations, the recognition of the continuously changing nature of society and identity, as well as the realization of the ultimate impossibility of grounding foundational principles once and for all.

The earlier-mentioned idea of Jefferson is clearly relevant here, that is, constitutions should be understood in a cyclical manner, as periodically in need of rethinking, leading to a new re-enactment of the constitutional arrangement. In an instituted, constitutional sense, this might mean a relatively accessible amendment rule that allows constitutions to be changed if the need arises. Amendment or 'changing constitutions is not a requirement for marginal adaptation of a more or less perfect document but rather is an essential mechanism to counteract a potentially fallible document' (Closa 2012, pp. 283, 283–4). As also recognized by the Venice Commission (an important institution of the Council of Europe, specialized in constitutional matters), while a negative perspective on constitutionalism emphasizes its (pseudo-) eternal or at least rigid, entrenched nature, a 'more positive perspective will recognise that amendments may often be necessary or desirable in order to promote effective democratic governance and ensure legitimacy' (Venice Commission 2010, p. 18).

### Creativity

The revolutions of the late 18<sup>th</sup> century are crucial to the democratic imaginary, in that the revolutionary spirit of the revolutions invoked a 'new beginning', conjuring up a new, modern way of understanding society, grounded in constituent power and popular sovereignty (Wilkinson 2012, p. 43; Kalyvas 2008, p. 205). As Arendt argued in *On Revolution*, 'any understanding of revolutions in the modern age is that the idea of freedom and the experience of a *new beginning* should coincide'. (Arendt 1990, pp. 29, 28–29). In this regard, the constitutional *potentia* that Arendt observes in the American Revolution is about the 'capacity to create a "new beginning" for political freedom, as well as institutions to preserve a space in which freedom can be exercised for posterity' (Wilkinson 2012, p. 42). Revolutions are about the creation of new foundations for a novel societal order, and are thus about social creativity in a radical sense. Arendt draws attention to how the American and French political revolutions were about the 'collective capacity to initiate new political beginnings and to deliberately participate in the extraordinary founding of new constitutions' (Kalyvas 2008, p. 202).

It is not only the revolutions themselves that can be understood as spontaneous moments of collective creativity. Creativity is equally important in the

form of political society that is being created by means of new constitutional foundations, that is, a society in which freedom is upfront by means of the creation of spheres of political participation, public deliberation, and self-government. In this, the democratic imaginary informs a view of a new form of society that acknowledges the continuous tension between what Castoriadis calls the instituted and the instituting, the social and radical imaginary. In modern, democratic society, the fragility of society's institutions and the uncertainty that is at the basis of any societal order are fully recognized. For Castoriadis (as for Arendt), the acceptance of the intrinsic uncertainty of human living together means the possibility for autonomy (see below), that is, the possibility for the institution of a society that gives itself its own laws in a reflective fashion. Thus, the project of an autonomous society is based on the idea that there is a 'collective awareness that society posits and creates its own laws' (Straume 2012, p. 4). It is by instituting autonomy or collective freedom, and doing away with heteronomy (that is, societies in which the ultimate uncertainty of its foundations is hidden, for instance, by means of reference to external markers, such as God), that the possibilities of creativity in politics and of significant renewal can emerge.

### **Self-government or self-creation**

As observed, sovereignty, understood as self-government, is a crucial component of the democratic imaginary. The constituent power that manifests itself most evidently in revolutionary moments includes both a negative dimension—the denial of the preceding order—but equally a positive one, that is, the lucid, collective self-institution of new political society. The democratic imaginary invokes the idea of sovereignty as a capacity to self-rule that is continuously to be exercised and safe-guarded. What Castoriadis calls autonomy is of essence in the democratic constitution:

An autonomous society, as a self-instituting and self-governing collectivity, presupposes the development of all its members to participate in its reflective and deliberative activities. Democracy in a full sense can be defined as the regime of collective reflectiveness; everything else can be shown to follow from this. And there can be no democracy without democratic individuals, and vice versa (1997, pp. 132-133).

Sovereignty is understood not as the concentration of ultimate decision-making power in formal politics, but rather as a 'creative, founding act of the constituent subject'. The sovereign 'determines the constitutional form, the juridical and political identity, and the governmental structure of a community in its entirety' (Kalyvas 2005, p. 226), while the sovereign is supposed to be in its most fruitful guise an inclusive subject, gathering all those that will be the subjects of the created constitutional form. Thus, '[c]onstitutional

politics might be seen as the explicit, lucid self-institution of society, whereby the citizens are jointly called to be the authors of their constitutional identity and to decide the central rules and higher procedures that will regulate their political and social life' (Kalyvas 2005, p. 237).

### *Concluding Remarks*

Modern constitutionalism is faced with a moment of deep uncertainty. A one-sided understanding of constitutions as vehicles of order, predominantly grounded in a modernist imaginary that stresses stability and certainty, fails to sufficiently take up key challenges affecting modern constitutionalism. Such challenges include the potential losses and heteronomous tendencies that result from the contemporary transformation of constitutionalism, in itself resulting from changes within national contexts as well as due to far-reaching complexities related to the emergence of inter- and transnational constitutional regimes. A sociological approach to constitutions highlights the inadequacy of a one-sided emphasis on formal-rationality, and draws attention to how modern constitutional orders are rather grounded in the dual imaginary signification of mastery and autonomy that characterizes modernity at large, and which informs the constitutional *form* (norms, procedures, design), but equally relates to constitutional *substance* (including issues of constitutional identity and self-understanding, as well as societal engagement with foundational rules).

Constitutional sociology understands constitutionalism rather than as a visible and rationally designed construct as ultimately a 'field of knowledge' or 'web of ideas about the organization of political power' (Scheppelle forthcoming). In historical terms, constitutionalism as an idea and practice is deeply informed by an instituted set of imaginaries related to political modernity. I have proposed here that two constitutional imaginaries have become particularly significant in historical terms: the modernist and the democratic imaginary. The modernist imaginary is grounded in ideas of state sovereignty, absoluteness, endurance, and distrust, and in general justifies constitutionalism as a way of creating order and certainty. The democratic imaginary refers to a horizon of indeterminacy, dynamism, creativity, and collective autonomy, and generally justifies constitutionalism as a mode of collective self-constitution. This dual imaginary means modern constitutionalism faces continuing ambiguity: the two imaginaries provide in many ways, contrasting justifications for constitutional orders, but are equally co-dependent.

Contemporary times of constitutional transformation and transnationalization, however, indicate a trend towards a reductive interpretation and justification of constitutionalism, in terms of order and formal-legal rationality, in which the dimensions of democratic self-rule and constituent power are portrayed as obsolete and redundant in a context of the juridification of politics,

the substitution of democratic politics by rights, and global constitutionalism-in-formation (c.f. Kumm 2009; Thornhill 2016). The argument made here is that this interpretation is reductive, misrepresents the role of the political in modernity, and ignores the societal disconnect, lack of legitimacy, and loss of integrative force that results from a purely legalistic understanding of modern constitutionalism.

But the modernist and democratic imaginaries do not necessarily need to be in strong contrast (c.f. Brunkhorst 2009), in that compromises between legal order and self-rule are imaginable. Indeed, continuous attempts to shape constitutions in a way that reflects both the orderly and the creative can be observed in contemporary constitutional reform projects. In some cases, one can even observe creative attempts to start anew, as is arguably the case in the recent constituent attempts at new constitutional beginnings in Iceland. Finally, it needs to be acknowledged that there is always the risk that constitutional creation results in forms of repression and heteronomy, in that an ultimately one-sided focus on mastery may result in 'frozen', disenchanting, and formalistic constitutional structures, while distinctive plays on constitutional empowerment and creativity, risk ending in forms of closure and exclusion.

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## Author Biography

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## Notes

- 1 I would like to thank two anonymous reviewers for their most helpful comments on earlier versions.
- 2 In Europe, the current assault on liberal constitutionalism in countries such as Hungary and Poland, and attempts at instituting ‘illiberal democracy’, is of great concern from this perspective (c.f. Closa and Kochenov 2016).
- 3 The emphasis in the article is on Castoriadis’ and, to a lesser extent, Lefort’s works on the imaginary. Castoriadis is central to the argument that modern constitutionalism is grounded in an ambiguous constellation of imaginary significations, whereas Lefort’s insights in the symbolic institution of democracy links the imaginary to the processes of meaning-giving and constitutional experience of actors themselves. The nature of political imaginaries, and their complex relation to political power as well as to modern constitutions is left, however, for future discussion. I will relate Lefort to Scheppele’s groundbreaking recent contribution to a phenomenological sociology of constitutions (Scheppele forthcoming). Arendt’s work is not structurally discussed here but comes through in the final part. Her views on constitutionalism would need much more reflection than I can offer in this article. Equally, Brunkhorst’s work on legal revolutions (Brunkhorst 2014) and particularly his understanding of a dual constitutional—Kantian and managerial—mindset is of vital importance, but further reflections cannot be included here.
- 4 Castoriadis described the relation between the two imaginary significations as ‘the conflict, but also the mutual contamination and entanglement, of two imaginary significations’ (Castoriadis 1997, p. 37; c.f. Carleheden 2010).
- 5 In this regard, it should be acknowledged that Castoriadis himself thought that, in the period since 1950, modern society was increasingly characterized by the ‘eclipse of autonomy’, increased ‘conformism’, and decreasing ‘social, political, and ideological conflict’ (Castoriadis 1997, p. 39). In the view of the argument made here, in current times the imagination of constitutional democracy is predominantly imagined through what I will refer to as a modernist constitutional imaginary.
- 6 The argument made here can be linked to sociological debates on multiple modernities, and in particular the work of Shmuel Eisenstadt (Eisenstadt 1999). An important insight is that while modern constitutionalism forms a wider pattern in the institution of modern societies, it is instituted in distinctive ways in specific historical and societal contexts, as a result of enduring conflict over the interpretation of order and popular sovereignty. In the context of East-Central Europe, I have made an attempt to combine the debates on multiple modernities with those on democratization and constitution-making (Blokker 2010).
- 7 A pertinent, even if highly complex, example is the post-Brexit United Kingdom, which increasingly faces constitutional pressures, not least in the forms of, on the one hand, internal fragmentation, in particular due to a possible Scottish independence, and, on the other, the desire of political classes to retreat from the

European constitutional order, and hence the need to redefine the UK's constitutional identity.

- 8 But see: Ezrahi (2012); Gibbs (2010); Olson (2016); Perju 2010); Torres and Guinier (2012).
- 9 In this regard, Habermas' notion of 'constitutional patriotism', which purportedly is about the social relations in which legal constitutions are embedded, is closely related to the 'modernist constitutional imaginary' that I identify below, in its emphasis on rationality, formal norms, procedures, and rights, and does not give social creativity and the collective production of meaning their due (see, in particular, Calhoun 2002).
- 10 Even if Jefferson did certainly not eschew any final foundations, as Hannah Arendt recalls: 'nothing is unchangeable but the inherent and unalienable rights of man' (in: Arendt 1990, p. 231). In more radical proposals, as in Antonio Negri's work, the distinction between constituent and constituted power disappears altogether (Kalyvas 2005, p. 242, n. 50).

